



Session 8

Active Efforts

Session 8: Active Efforts

- “Active efforts” must be made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family
- Judge must inquire into and determine whether active efforts made at every court hearing
- Alaska Supreme Court:
 - No pat formula; case-by-case
 - Passive: expecting parents to develop own resources to satisfy case plan
 - Active: taking parents through steps of case plan

Active Efforts – ICWA Regulations

- Affirmative, active, thorough, and timely efforts
- Intended to maintain or reunite child with family
- Assist parent, parents, or Indian custodian through steps of case plan and with accessing or developing resources
- Consistent with prevailing social and cultural conditions and way of life of Tribe
- In partnership with child, parents, extended family, Indian custodians, Tribe
- Tailored to facts and circumstances of case

Active Efforts Examples

1. Conducting comprehensive assessment of child and family
2. Identifying appropriate services and actively assisting parents in obtaining services
3. Inviting Tribe to participate
4. Conducting diligent search for extended family; consulting with family members to provide support for child and family
5. Offering culturally appropriate family preservation strategies; facilitate use of services provided by Tribe

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Active Efforts Examples (cont'd)

6. Taking steps to keep siblings together
7. Supporting regular visits consistent with child's safety and welfare
8. Identifying community resources, and assisting parents in using and accessing resources
9. Monitoring progress and participation in services
10. Considering alternative ways to address parents' needs if optimum services don't exist
11. Provide post-reunification services and monitoring

Active Efforts

When must active efforts be made?

- To prevent the need for removal, if possible; if child removed, as long as child is out of home
- For father – beginning when paternity established
 - Father who abandoned child before birth?

By whom?

- The State: OCS, DOC if parent incarcerated

To whom?

- ICWA: “Indian family”
- Regulations: Parent(s) or Indian Custodian

Active Efforts

- No exceptions to active efforts requirement
 - Must be provided unless/until TPR or dismissal
- Factors affecting **scope** of efforts
 - Repeated failure to cooperate or engage in case plan
 - Incarcerated parents
- Factors affecting **duration** of efforts
 - Need for permanency
 - Past unsuccessful attempts

Effect of “No Active Efforts” Finding

- Does **not** mean child goes home to unsafe situation or case is dismissed
- Judge may order OCS to comply by certain date; may levy sanctions if no compliance
- Judge cannot enter disposition order committing child to state custody for up to 2 years
- Judge cannot terminate parent's rights

Active Efforts: Visitation

- ICWA Regulations:
 - Regular visits in the most natural setting possible
- Alaska legislative findings
 - Reduces trauma for child
 - Enhances likelihood that child will return home
- State law
 - OCS required to provide reasonable visitation between child and child's parent and family
 - Court may order written visitation plan
 - Visits can be denied if clear and convincing evidence of harm to child

OCS Family Contact Policy

- Begin within 5 days of removal
- Sibling contact should be frequent, unless unsafe
- Family Contact Plan
 - Developed with family, caregiver, Tribe, GAL
 - Flexible and creative
 - Include family activities
- Supervision levels:
 - Unsupervised
 - Intermittently supervised
 - Structured family time (low to high supervision)
- Not used as threat/discipline to child or to control/punish parent